IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

WP(C).No. 12460 of 2006(G)

PETITIONER:

SMT.LIJO JOSEPH, W/O.FRANCIS P.THOMAS,
H.S.A (SOCIAL STUDIES), POMPEI'S ST.MARY'S
VOCATIONAL HIGHER SECONDARY SCHOOL, KATTOOR,
IRINJALAKUDA, THRISSUR DISTRICT.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:
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1. T.R.SHINA, W/O.C.B.UMESH,
HIGH SCHOOL ASSISTANT, POMPEI'S ST.MARY'S
VOCATIONAL HIGHER SECONDARY SCHOOL,
KATTOOR, IRINJALAKUDA, THRISSUR DISTRICT.

2. DISTRICT EDUCATIONAL OFFICER,
IRINJALAKUDA.

3. DY.DIRECTOR OF EDUCATION,
THRISSUR.

4. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

5. K.LAKSHMANAN, S/O.KARUNAKARAN,
UNDER SECRETARY TO THE GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

BY ADV. SRI.P.RAVINDRAN
GOVERNMENT PLEADER SMT. M.R. SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 12460 of 2006

APPENDIX

EXT.P1: COPY OF APPROVAL OF APPOINTMENT OF THE PETITIONER.

EXT.P2: COPY OF GOVERNMENT ORDER G.O.(RT)NO.613/04/G.EDN. DATED 6.2.2004.

EXT.P3: COPY OF COMMON JUDGMENT IN W.P.(C)nO.7873/04 AND W.P. (C)NO.22640/04

EXT.P4: COPY OF G.O.(RT)NO.1087/05 DT. 15.3.2005.

EXT.P5: COPY OF JUDGMENT IN W.P.(C) NO.11762/05.

EXT.P6: COPY OF COUNTER AFFIDAVIT FILED BY R5 IN W.P.(C) NO.11762/05.

EXT.P7: COPY OF G.O.(RT)NO.1679/06/G/EDN. DATED 25.4.06.

EXT.P8: COPY OF G.O.(P)NO.175/99/G.EDN. DATED 26.7.99.

EXT.P9: COPY OF G.O.(P)NO.240/99/G.EDN. DATED 29.9.99.

EXT.P10: COPY OF G.O.(P) NO. 112/01 DTD 26.3.01.

EXT.P11: COPY OF STAFF FIXATION ORDER FOR THE YEAR 2001-02 ISSUED BY THE GOVERNMENT.

EXT.P12: COPY OF THE ORDER OF THE DEO DTED 9.5.2002.

EXT.P13: COPY OF THE ORDER OF THE DPI DATED 24.5.2003.

RESPONDENT'S EXHIBITS

EXT.R1(A): COPY OF THE APPOINTMENT ORDER DT. 8.6.2001.

EXT.R1(B): COPY OF ORDER OF THE DEPUTY DIRECTOR DT. 14.8.02.

EXT.R1(C): COPY OF THE APPOINTMENT DT. 17.3.03.

EXT.R1(D): COPY OF THE JUDGMENT OF THE DIVISION BENCH DT 21.12.06 IN W.A. NO.393/06.

EXT.R1(E): COPY OF THE ORDER DT. 15.6.07 IN R.P. NO.512/07

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.12460 OF 2006

Dated this the 19th day of December, 2007

JUDGMENT

The petitioner whose appointment as HSA (Social studies) in the Pompei's St. Mary's Vocational Higher Secondary School, Kattoor, Irinjalakuda has been approved with effect from 2.6.2003 now wants to prevent the 1st respondent from getting approval of her appointment with effect from 8.6.2001 as HSA (Social Studies) on the ground that such approval would affect the petitioner's seniority in the cadre of HSA (Social Studies). The issue has a checkered history, which may be narrated as follows:

2. The 1st respondent was appointed as HSA (Social Studies) in a vacancy caused by retirement one Sri. Francis Devasahayam. After joining duty on 8.6.2001, the 1st respondent went on maternity leave from 1.10.2001 to 8.1.2002, in which leave vacancy the petitioner was appointed. The DEO rejected the approval of the appointment of the 1st respondent on the ground that there are already two protected teachers working

in the School. Since the appointment of the 1st respondent was not approved consequently the appointment of the petitioner was also not approved. Later the petitioner was appointed in a subsequent vacancy which arose on 2.6.2003 overlooking the 1st respondent, which was approved. Appeals and revisions followed, Government passed Ext.P2 order in revision upholding the DEO's order. Pursuant to Ext.P3 judgment of this Court, the Government reconsidered the matter and passed Ext.P4 order upholding the very same view. Again the 1st respondent approached this Court by filing W.P. (C) No.11762/05 in which, by Ext.P5 judgment, this Court held that the 1st respondent is also entitled to approval of appointment with effect from 1.6.2003 taking note of the fact that the 1st respondent was actually working in the School with effect from 8.6.2001. The learned Single Judge, who passed Ext.P5 judgment, permitted the 1st respondent to file a representation claiming salary for the period from 8.6.2001 also, which was directed to be considered with the sympathy it deserves. The 1st respondent filed an appeal against Ext.P5 judgment as also a representation as contemplated in Ext.P5 judgment. While the Writ Appeal was pending, the

Government considered the 1st respondent's representation and passed Ext.P7 order upholding her claim for approval of appointment with effect from 8.6.2001. Originally in view of Ext.P7 Order, the Division Bench by Ext.R1(d) judgment dismissed the Writ Appeal as infructuous. In the meanwhile the petitioner filed this writ petition challenging Ext.P7 order. The 1st respondent moved a review petition in the Writ Appeal which resulted in Ext.R1(e) order, in which this Court directed that since the Writ Appeal filed by the 1st respondent was dismissed only consequent to Ext.P7 order, she can contest on all matters taken up in the Writ Appeal in subsequent writ petition also, notwithstanding the findings in Ext.P5 judgment of the learned single judge. The contentions of the petitioner and the 1st respondent have to be appreciated in the above background.

3. The contention of the petitioner is that the rejection of the claim of the 1st respondent for approval of appointment with effect from 8.6.2001 stands concluded by Ext.P5 judgment and that in so far as the 1st respondent has been given only the benefit of approval with effect from 1.6.2003 and the other observation therein was only for the purpose of

getting salary for the period the 1st respondent worked from 8.6.2001, it would not confer any right on the 1st respondent to get approval of appointment from 8.6.2001. Further contention is that in any event Ext.P7 is wrong. According to the petitioner as per the Full Bench Decision in **Philomina** V. **Babu Varghese** [**2001(2) KLT 519]** only minimum subject requirement need be fulfilled for the purpose of accommodating protected teachers also. If that be so, the retention of the protected teacher to reject approval of appointment to the 1st respondent was perfectly justified is the contention raised. Therefore the petitioner seeks quashing of Ext.P7 order.

4. The 1st respondent on the other hand contends that in view of Ext.R1(e) order all the contentions available to her in the Writ Appeal was saved to be agitated in this writ petition and therefore she is certainly entitled to canvass for the proposition that her appointment on 8.6.2001 was perfectly justified. She would further submit that on 8.6.2001 there were 10 sanctioned posts in 4 subjects, which were to be distributed as follows:

" Sanctioned Posts	PS	NS	Maths	SS	Total
	2	2	3	3	10
Teachers on Roll	2	3	3	2	10"

Therefore the shortage was in the subject of Social Studies and the accommodation of a protected teacher in Natural Science against the vacancy of Social Studies was clearly illegal in view of G.O.(MS)No.125/01 dated 2.4.2001 and the decision of this Court in **Padmakumar** Vs. **Director of Public Instruction [211(2) KLT 288]**. The 1st respondent would therefore contend that Ext.P7 is perfectly valid and proper and therefore the writ petition is liable to be dismissed.

5. I have considered the rival contentions in detail. At the outset I must note one relevant factor. There is no dispute that the 1st respondent was appointed by the manager as HSA (Social Studies) on 8.6.2001 in a retirement vacancy. It is also not disputed that originally the petitioner was appointed in the leave vacancy caused pursuant to the 1st respondent going on maternity leave for the period from 1.10.2001 to 18.1.2002. At the time when the petitioner's appointment in the leave vacancy was not approved, the petitioner also canvassed for the proposition that the appointment of the 1st

respondent on 8.6.2001 is perfectly valid and proper. It so happened that subsequently the Manager, who appointed the petitioner and the 1st respondent, originally, changed and the Manager, who took charge later appointed the petitioner in preference to the 1st respondent when a vacancy arose on 1.6.2003. That is the reason why the learned Single Judge in Ext.P5 judgment directed that the 1st respondent is entitled to approval of appointment with effect from 1.6.2003, which is the date when the petitioner also was appointed. Therefore the petitioner is now trying to take advantage of the aforesaid circumstances caused by the change in management. Admittedly the petitioner has no claim for appointment to the post to which the 1st respondent was appointed on 8.6.2001. As such I doubt very much whether the petitioner has even locus standi to challenge Ext.P7 order, which relates solely to the approval of appointment of the 1st respondent in the vacancy with effect from 8.6.2001 to which vacancy the petitioner never had any claim at all. That being so, I do not find any justice in the case of the petitioner.

6. The contention raised by the petitioner that in view of Ext.P5 judgment, the case of the 1st respondent regarding

approval of appointment with effect from 8.6.2001 is finally concluded against her, cannot be countenanced in view of Ext.R1 (e) order in the R.P. filed against Ext.P5 judgment. In Ext.R1(e) order, the Division Bench had specifically observed that since the Writ Appeal filed by the 1st respondent was dismissed only consequent to passing of Ext.P7 order, she can contest on all matters taken up in the W.A. in this writ petition also. Further in Ext.P5 judgment, the Learned Single Judge directed the Government to consider the claim of the 1st respondent for salary from 8.6.2001 sympathetically since she was working continuously from 8.6.2001. Without approving the 1st respondent's appointment with effect from 8.6.2001, salary could not have been directed to be paid to the 1st respondent with effect from that date. Taking into account all these circumstances, I am of opinion that the 1st respondent is certainly entitled to support the findings in Ext.P7, if she can legally do the same.

7. Now coming to the merits of the contentions regarding the entitlement of the 1st respondent for approval of appointment with effect from 8.6.2001, it is not disputed before me now that as on 8.6.2001, as per the subject ratio,

the shortage was in the subject of Social Studies. Therefore for satisfying subject ratio, a Social Studies Teacher ought to have been appointed to fill up the vacancy which arose on 8.6.2001, which was actually what the Manager had done by appointing the 1st respondent to that post. Approval to that appointment was rejected on the ground that there was a Natural Science Teacher entitled to protection and therefore she should have been adjusted against the vacancy in Social Studies. I am of opinion that, that reasoning is not correct at all in view of G.O.(MS)NO.125/01 dated 2.4.2001 and the decision in **Padmakumar,s case (supra)**. In the said G.O., the Government had clarified as follows:

> "After having examined the matter in detail, Government are pleased to clarify that it is mandatory to follow subject ratio 1:1:1 in applying the revised teacher student ratio 1:40 or in giving protection or in recalling protected teachers to parent school"

In **Padmakumar,s case (supra)** the facts therein are exactly identical on all fours to the present case. There the learned Single Judge found that for the purpose of accommodating a protected teacher the subject ratio cannot be tinkered with. The situation arising in the present case is also the same.

Therefore the action of the Manager in appointing the petitioner to that vacancy which arose on 8.6.2001 is perfectly in accord with Government order referred to above and the decision in **Padmakumar,s case (supra)**. That being so, the 1st respondent was entitled to have her appointment with effect from 8.6.2001 approved. In such circumstances, Ext.P7 has to be held to be perfectly valid and proper. I do so. Therefore I do not find any merit in this writ petition and accordingly the same is dismissed.

S. SIRI JAGAN, JUDGE

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